IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE ACTING CHIEF JUSTICE MR.K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 15TH MARCH 2007 / 24TH PHALGUNA 1928

WA. No. 233 of 2007(D)

AGAINST THE JUDGEMENT IN WPC.16224/2003 Dated 25/08/2006
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APPELLANT: 2ND RESPONDENT IN THE WPC

STATE OF KERALA, REPRESENTED BY
ITS CHIEF SECRETARY, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

BY ADDL. ADVOCATE GENERAL SRI VENGANNOOR CHANDRASEKHARAN NAIR
AND GOVT PLEADER SRI P.K.BABU

RESPONDENTS: PETITIONER & 1ST RESPONDENT IN WPC
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1. HINDUSTAN LEVER LIMITED,
A COMPANY INCORPORATED UNDER THE COMPANIES ACT,
1956, HAVING ITS FACTORY AT TATAPURAM,
KOCHI-682 014, REPRESENTED BY ITS FACTORY
MANAGER, MR. ANURAG MEHROTRA.

2. CORPORATION OF COCHIN,
PARK AVENUE ROAD, KOCHI, REP. BY
ITS SECRETARY.

R1 BY SENIOR ADVOCATE MR S. GANESH,
SRI JOSEPH KODIANTHARA AND SRI M.S.GUPTA
R2 BY ADV. SRI.PRAVEEN K.JOY,SC,COCHIN CORPORATION

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD
ON 15/03/2007, ALONG WITH WA NO. 234 OF 2007
WA NO. 408 OF 2007 THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

K.S. RADHAKRISHNAN, Ag. C. J. & M.N. KRISHNAN, JJ.

Writ Appeal Nos. 233, 408 and 234 of 2007

Dated: 15th March 2007

JUDGMENT

Radhakrishnan, Ag. C.J.

Writ Appeal Nos. 233 and 408 of 2007 arise out of the judgment in W.P.C. No 16224 of 2003 and Writ Appeal No. 234 of 2007 arises out of the judgment in W.P.C. No 2445 of 2004. Writ petitions were disposed of by a common judgment. Aggrieved by the judgment in W.P.C. No 16224 of 2003 State of Kerala and the Corporation of Cochin have preferred W.A. Nos. 233 and 408 of 2007 respectively. State of Kerala and the Sub Registrar have also preferred W.A. No 234 of 2007 against the judgment in W.P.C. No 2445 of 2004.

2. W.P.C. No 2445 of 2004 was preferred by Hindustan Lever Limited (HLL) seeking a writ of certiorari to quash Exts. P12, P17 and P19 and also for a direction to the Sub Registrar to accept and register originals of Exts.P10 and P11 or such other document that may be presented and also for other consequential reliefs. W.P.C. No 16224 of 2003 was preferred by HLL seeking a writ of certiorari to quash Exts. P11 and P14 and also

for a direction to the appellant not to take any action in respect of Ext. P5 building permit and Ext. P8 occupancy certificate pursuant to Ext. P14 and also for other incidental reliefs.

3. Learned single judge disposed of all the writ petitions by a common judgment. W.P.C. No 2445 of 2004 was disposed of by the learned judge in the following terms.

> i) There will be a direction to the first respondent to accept and register the originals of Exts. P10 and P11 which will be presented by the petitioner or through their authorised representative for assignment in respect of the properties covered by Exts. P10 and P11 in favour of the additional 4th respondent, ignoring Exts. P12, P17 and P19 and irrespective of the change in the stamp duty payable on account of the delay since the dates of execution of Exts. P10 and P11.
>
> ii) As regards the further sale deeds to be presented for registration in respect of 7.92 acres of land in survey numbers 219/1 (Part), 2, 3, 220/1, 2,3 (Part), 4,221/1, 2, 3 (Part) and 4 (Part), 222/1 (Part), 2, 225/5 (Part) and 6 (Part), 4, 226/1, 245/1 (Part), 2 (Part) and 3 (Part), 246/1 (Part), 2 (Part) and 3 (Part), 246/1 (Part), 2 (Part) and 3 (Part), 1089, 2450 (Part),2452 (Part), 2453, 2454,2455 (Part), 2741 and 2742 situated at Tatapuram, Ernakulam village, Kanayannur taluk, Ernakulam district comprised in Thandaper No 5480 of the Ernakulam Village, the petitioner-Company is permitted to voice the grievances, if any, which they may be having regarding the stamp duty payable, before the Government by filing proper representations in that regard. The Government will consider those representations with as much sympathy as the same deserve, taking into account the circumstances under which the execution of the documents was delayed.

W.P.C. No 16224 of 2003 was disposed of by the learned judge in the

following terms:

> i) Ext.P14, to the extent it cancels Ext.P8 occupancy certificate dated 19.8.2002, is quashed holding that Ext.P5 building permit which pertains to cluster Nos. A, B and C of the apartment complex was validly issued and completely acted upon. Ext. P14 is not interfered with in so far as the same pertains to Ext.P10 building permit dated 10.4.2000, recording the stand of the petitioner-company that there is no proposal to make any constructions on the strength of Ext. P10 and noticing the obvious position that Ext.P10 has already become lapsed by expiry of time.

4. Learned Additional Advocate General submitted that the learned single judge was not justified in giving the above mentioned directions. Counsel submitted that the reliefs sought for can be granted only if HLL establishes that they have title over the properties in question. Counsel submitted that the Sub Registrar was justified in refusing registration of the documents produced for the reasons stated in the impugned orders. Reference was made to the decision of the apex court in Purushothaman Nambudiri v. State of Kerala (AIR 1962 S.C. 694) in support of his contentions.

5. Sri Ganesh, Senior Counsel appearing for the first respondent, HLL submitted that the reasons stated for not accepting the two documents for registration are illegal and unsustainable. Counsel also submitted that the writ petitioner has been in possession of the properties in question for

over a century of which they got title, interest and possession. Proceedings were in fact initiated against them by the Taluk Land Board treating their properties as their own and Ext. P23 order dated 14.6.1997 was issued directing surrender of various items of properties. The order was later reversed by this court in C.R.P. No 1591 of 1999. Senior Counsel therefore submitted that the Sub Registrar has no jurisdiction to deny registration of the documents duly executed by the first respondent through its authorised agents. Counsel submitted that the reasons stated in the impugned orders are all unsustainable and illegal. Senior Counsel also submitted that the Corporation of Cochin is not justified in disputing the title of HLL which has always been recognised by the Taluk Land Board and later by this court. Counsel submitted that the action of the Sub Registrar as well as the Corporation of Cochin is malafide and due to extraneous and irrelevant reasons. Counsel also referred to a letter dated 27.11.2003 received from the Sub Registrar which reads as follows:

> "I was in no way responsible for the action taken by me as desired by the Government.
>
> I was summoned to the Legislative Assembly Hall on 4.6.2003 by the Legislature Petitions Committee. The details regarding sale of your controversial building has been collected and instructed orally not to register any documents without the written permission of the Hon'ble Petitions Committee. The representatives of your company has also attended the meeting.

> Letter No M 12445/75 dated 4.6.2003 has been received from the Taluk Land Board and it is clear from the said letter that your controversial building is in the disputed property."

6. We are primarily concerned with the question as to whether the reasons stated by the Sub Registrar for refusing registration of two documents are legally sustainable or not. First reason stated by the Sub Registrar is that he was summoned by the Legislature Petitions Committee and directed him orally not to register the documents without the permission of the Committee. No statutory provision has been brought to our notice enabling the Legislature Petitions Committee to give such a direction to the Sub Registrar not to register the documents presented before him. Sub Registrar is statutory functionary who is expected to act within the provisions of the Registration Act and Rules and the Legislature Petitions Committee has no power or jurisdiction to interfere with the statutory functions of the Sub Registrar. It is trite law that the decision of a statutory authority must be absolutely unfettered by any extraneous guidance by the executive or administrative wing of the State. In Commissioner of Police v. Gordhandas Bhanji (AIR 1952 S.C 16) the apex court while dealing with the provisions of the Bombay Police Act, 1902 set aside the order of cancellation of license since the Commissioner had acted

merely as the agent of the Government. In Orient Paper Mills v. Union of India (AIR 1970 S.C. 1498) the Deputy Superintendent was empowered to levy excise duty. Instead of deciding it independently, the Deputy Superintendent ordered levy of excise in accordance with the directions issued by the Collector. The Supreme Court set aside the order passed by the Deputy Superintendent. In Rambharosa Singh v. State of Bihar (AIR 1953 Patna 370) the relevant rules empowered the District Magistrate to give public ferries on lease subject to the direction of the Commissioner. Instead of the Commissioner, the Government gave certain directions. The High Court set aside the order passed by the District Magistrate.

7. We are of the view that when a statutory authority entrusted with the power does not exercise that power but acts under the dictation of a superior authority, just like in this case, the Legislature Petitions Committee, the statutory authority is acting under the dictation of that authority which is completely inconsistent with the principles of administrative law. Statutory authority has to act unfettered by any extraneous guidance by the executive or administrative wing of the State. In our view, the Sub Registrar has committed an error by acting on the oral direction of the Legislature Petitions Committee in not registering the documents. The reason stated is therefore wholly illegal and unsustainable.

8. The second reason is that he has received a letter dated 4.6.2003 from the Taluk Land Board stating that the building is situated in the disputed property. This reason is also unsustainable. The Taluk Land Board itself has found that the petitioner has got title, interest and possession over the properties in question and were included in the account of the landlord in the Land Board proceedings and were directed to be surrendered as excess land. The order was reversed by this court in C.R.P. No 1591 of 1999 and that order has become final and hence the letter dated 4.6.2003 has no relevancy and hence that reason is also unsound in the eye of law.

9. We may also point out that this court in W.P.C. No 2445 of 2004 gave a direction to the District Collector to conduct a survey of the land and report as to whether any portions of the construction stand upon the land which was directed to be surrendered by Ext. P23 order passed by the Taluk Land Board. On behalf of the District Collector Ext. P28 statement was submitted stating that on a perusal of the sketch report it is seen that no construction work has been conducted in the land ordered to be surrendered by the Taluk Land Board, Kanayannur.

10. We are therefore of the view that the reasons stated by the Sub Registrar for not registering the documents are unsustainable. In such

circumstances, learned single judge, in our view, was justified in quashing Exts.P12 and P19 orders and giving a positive direction to the Sub Registrar to accept and register the originals of Exts. P10 and P11, the validity of those orders was examined by the learned judge in paragraph 23 of the judgment. Learned single judge has also found that the stand taken by the Corporation is unreasonable and illegal and we find no infirmity in the judgment of the learned single judge to be interfered with in these appeals and the appeals are dismissed.

Sd/-

K.S. RADHAKRISHNAN
Ag. Chief Justice

Sd/-
M.N. KRISHNAN
Judge

15/03/2007

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